UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of A. RICCIARDELLI & SONS, INC. Employer and INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFT WORKERS LOCAL NO. 3, AFL-CIO, CLC Petitioner and OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA, LOCAL NO. 534, AFL-CIO, CLC Intervenor	Case 1-RC-21514

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a metal stud, plastering and drywall contractor located in Needham Heights, Massachusetts. The Petitioner (Local 3) seeks to represent all full-time and regular part-time plasterers employed by the Employer, but excluding all other employees, guards, and supervisors as defined in the Act. Neither the Employer nor the Intervenor (Local 534) has questioned the appropriateness of the unit being sought by the Petitioner.

Historically, the Employer has been bound by 8(f) multiemployer collective-bargaining covering plasterers with both Local 3 and the Intervenor (Local 534). The Local 534 8(f) Plasterers' contract defines the unit territorially and limits it to 45 cities and towns, including Boston and Cambridge, located in the Greater Boston area.[1] The Local 3 8(f) Plasterers' contract also defines the unit territorially, covering eastern Massachusetts, including Boston, and thus nominally overlaps to some degree the territory covered by the Local 534 agreement.[2]

For many years, the Internationals of the union parties herein the International Association of Operative Plasterers and Cement Masons (Local 534 or Operative Plasterers) and the International Union of Bricklayers & Allied Craft Workers (Local 3 or Bricklayers), maintained an agreement that settled the question of which of their respective locals would represent employees where there was overlap among their various territorial jurisdictions. The effect of this agreement, as far as the instant union parties were concerned, was that Local 534's jurisdiction always "trumped" any overlapping jurisdiction of Local 3.

In 1998, the Operative Plasterers unilaterally revoked the above agreement. This action was upheld at the convention of the Building and Construction Trades Department of the AFL-CIO in July 2000. Thereafter, the Operative Plasterers expanded the territorial jurisdiction of the Petitioner from the 45 cities and towns of Massachusetts, referred to above, to include all of Massachusetts, New Hampshire, Vermont, and Maine.

The Employer appears to do almost all of its plastering work in Boston and Cambridge. The remainder appears to be done within portions of Local 3's jurisdiction that is not co-extensive with Local 534's territory.

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[1] The multiemployer association parties to this agreement are the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Master Plasterers Association of Boston and Vicinity.

[2] The multiemployer association parties to Local 3 agreement are, the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. and the Mason Contractors' Association of Massachusetts, Inc.

The Employer employs a core group of two plasterers who are employed on a permanent basis. The Employer's plasterers are supervised by the Employer's President.

The Employer applies the Local 534 8(f) agreement to all jobs located in its territorial jurisdiction. It applies the Local 3 agreement to jobs in that union's territory that does not overlap Local 534's territory.

The total dollar value of wages and fringe benefits in the 8(f) agreements of Local 534 and Local 3 is the same, except for a one-month difference in the effective date of the scheduled increases for these items. Although the record does not disclose the union membership status of any of the Employer's plasterers, reciprocity agreements between certain of the funds (health and welfare, annuity, and local pension) of the Operative Plasterers and the Bricklayers transfer payments between the corresponding funds in accordance with the union membership of the individual plasterer.

Alley Drywall, Inc., 333 NLRB No. 132 (2001), is also a case that arose in the aftermath of the abrogation of an agreement between the Operative Plasterers and the Bricklayers resolving the competing territorial claims of their respective locals. In that case, as in this one, the Petitioner petitioned for a unit described in terms of all of the employer's plasterers rather than in terms of only those plasterers within a particular territorial jurisdiction. The Board agreed, holding that while substantial weight must be given to bargaining history in furtherance of stability in industrial relations, this could only be done within the context of the Board's established community of interest standard, as to which it observed, at slip op. p. 2:

> Section 9(b) of the National Labor Relations Act directs the Board to decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof …. [T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, 'if not final, is rarely to be disturbed.'" South Prairie Construction v. Operating Engineers Local 627, 425 U.S. 800, 805 (1976) (citation omitted). There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit -- the Act only requires that the unit for bargaining be appropriate so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. Overnite Transportation Co., 332 NLRB 723 (1996); Brand Precision Services, 313 NLRB 657 (1994); Phoenix Resort Corp., 308 NLRB 826 (1992). In defining the appropriate bargaining unit to ensure employees the fullest freedom in exercising the rights guaranteed by the Act, the key question is whether the employees share a sufficient community of interest. Alois Box Co., 236 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994).
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> In determining whether employees share a sufficient community of interest to constitute an appropriate unit, the Board weighs various factors, including the similarity of skills, functions, and working conditions throughout the proposed

unit; the central control of labor relations; transfer of employees among the Employer's other construction sites; and the extent of the parties' bargaining history. P. J. Dick Contracting, Inc., 290 NLRB 150, 151 (1998), citing Metropolitan Life Insurance Co., 380 U. S. 438 (1965). Also, the Board will consider a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of similar or dissimilar qualifications, training, and skills; differences in job functions; amount of working time spent away from the facility; and integration of work functions. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962); Banknote Corp. of America v. NLRB, 84 F. 3d 637, 647-648 (2d Cir. 1996).

The petitioned-for unit in Alley Drywall is virtually indistinguishable from the Employer's plasterers with respect to community of interest considerations. Both groups of employees are hired on a permanent basis, not on a job-to-job contingency. They have shared and clearly identifiable job functions They enjoy the same wages and benefits wherever they work. They also work under the same supervision wherever they work. The Board in Alley Drywall concluded that, in these circumstances, where the same group of employees is working under the same general terms and conditions of employment, it would be impermissibly arbitrary to divide such employees into different units depending solely on the location of their job sites. The Board, in affirming the Regional Director in Alley Drywall, noted that in John Deklewa & Sons, 282 NLRB 1375 (1987), the Board did not intend that the scope of single-employer units in the construction industry be limited to the unit defined by previous 8(f) bargaining agreements and acknowledged that an 8(f) bargaining history is only one factor to be weighed in determining bargaining units. Consequently, the Board found in Alley Drywall that the group of employees at issue in that case constituted an appropriate unit without geographic limitations with respect to the job sites they worked at. Similarly, here there is no reason to define the unit on any geographic basis where all of the Employer's employees share such a strong community of interest.

Therefore, I find that the Employer's plasterers constitute a unit appropriate for bargaining without regard to any geographic limitations with respect to the job sites they work at.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act:

> All full-time and regular part-time plasterers employed by the Employer from its Needham Heights, Massachusetts location, but excluding all other employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION[3]

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

Those eligible shall vote whether or not they desire to be represented by: (1) International Union of Bricklayers & Allied Craft Workers, Local No. 3. (2) Operative Plasterers and Cement Masons International Association of the United States & Canada, Local No. 534, AFL-CIO, CLC .

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc.; 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co. 394 U. S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before July 3, 2002. No

[3] Because the Employer is engaged in the construction industry, the eligibility of voters will be determined by the formula in Daniel Construction Co., 133 NLRB 264 (1961), and Steiny & Co., 308 NLRB 1323 (1992).

extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 10, 202.

/s/ Rosemary Pye
Rosemary Pye Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 26th day of June, 2002.

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